IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 8 of 2005

SMT. ZEHRA BAI
V/S
YAHYAH ALI

Mr. DR BHANDARI, for the appellant / petitioner

Date of Order : 12.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

Both the learned Courts below have decreed the suit for eviction. The suit was filed, inter alia, on the ground of subletting, reasonable, and bonafide necessity, default, and that the premises were let out for office to another person, who has already expired have the premises are no more required by the defendant no.1 and 2. Issue no.1 comprehended the question of subletting. The subletting pleading was that the premises have been parted with possession in favour of defendant no.3 to 6, who operate a club there.

The learned trial Court found, on appreciation of evidence, that from the evidence of the plaintiff, comprising of P.W.1, P.W.2, Ahsan Hussain, that the premises have been parted with possession, and that this fact, defendants have not been able to successfully rebut. Inter alia, on that basis, it has been found that since the possession has been parted with, and the plaintiff is not a party to the terms of agreement, by which premises have been parted with possession, and therefore, he has been found to have been sublet. It has also been noticed, that the defendants no.3 to 6, in whose favour, the possession was parted with, have not at all turned up, even to controvert that it is not in their possession, and they are not operating the club.

The learned Lower Appellate Court has affirmed the finding, by holding that from the evidence of the plaintiff, it is established that after death of Ahmad Ali, the premises were in possession of defendants no.1 and 2, and at present, the possession of the premises has been parted with possession in favour of defendant no.3 to 6, which fact has

not been successfully controverted and therefore, the finding of subletting has been affirmed.

It is contended by the learned counsel for the appellant, that there is no definite finding recorded by the learned Courts below regarding subletting, rather the Courts have proceeded, as if the burden was on the defendant, and then have proceeded on the basis of presumption.

Having read the findings specially of the learned trial Court, I find that the contention of the learned counsel for the appellant is misplaced, inasmuch as, the learned trial Court has positively appreciated the evidence of the plaintiff, and the witnesses, and has found the fact that, from the plaintiff's evidence, parting with possession is established. Then he has looked into the evidence of the defendant to find out as to whether the defendants have been able to rebut that evidence. It is, in this process, that the defendants' evidence has been found to be deficit. Then finding the possession to have been parted with, the presumption of subletting has been drawn, which cannot be said to be bad. Thus, the finding does not require any interference.

Learned counsel then tried to make submissions on the question of reasonable, and bonafide necessity, by seeking to contend that the question of comparative hardship has not been gone into by the learned Courts below. It is a different story that in view of the judgment of this Court in S.B.C.S.A.No.5/2002 (Firm Moolchand Meghraj & Ors. Vs. Amrit Lal & Ors.) decided on 19th April, 2002, since there is no evidence whatever led on the side of the appellant, to show the factors tilting the comparative hardship in favour of the appellant, this aspect need not detain me. I need not say more on this aspect, also for the reason, that if the decree for eviction can be sustained on any of the grounds of evictions on which it has been decreed, simply because the Courts below have passed the decree on more than one grounds, I need not go into all the grounds. Since as noticed above, the appellant has not been successful in assailing the ground of subletting, the decree passed by the learned Courts below need not be interfered with.

The appeal thus, has no force, and is hereby dismissed summarily.

Learned counsel at this stage requests for some reasonable time to be granted for vacating the premises.

In the totality of circumstances, one year's time is granted to the appellant to vacate the premises on the condition that the

defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff, and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today, and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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